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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
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14 MICHAEL LAVIGNE, *et al.*,
15 Plaintiffs,
16 vs.
17 HERBALIFE LTD., *et al.*,
18 Defendants.
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CASE NO. 2:18-cv-07480-JAK (MRWx)

**DECLARATION OF TOMMY
GIOIOSA IN SUPPORT OF
HERBALIFE'S OPPOSITION TO
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

Date: February 10, 2020
Time: 8:30 A.M.
Crtrm.: 10B

Assigned to Hon. John A. Kronstadt

DECLARATION OF TOMMY GIOIOSA

I, Tommy Gioiosa, declare as follows:

1. I have personal knowledge of the facts set forth herein, which are known by me to be true and correct, and if called as a witness, I could and would competently testify thereto.

2. I have worked as an Herbalife distributor since 1992, in and near the Orlando, Florida area. I have always been an independent contractor, and have never been an Herbalife employee.

3. In my years as an Herbalife distributor, I have had the opportunity to help plan, organize and attend dozens of Success Training Seminars (STSs). These independent events are planned and organized by an organizing committee of local Herbalife distributors, not by Herbalife. The distributor planning committee is responsible for planning nearly all aspects of the events, including the location, timing, and pricing of the STSs; it pays for all expenses related to the STSs; it selects the speakers for the STSs; and takes primary responsibility for the marketing and advertising for the STSs. From my experience, Herbalife's only role with STSs is to provide Herbalife product and some Herbalife banners or other branded material to be displayed at the STSs.

4. Herbalife does not "script out" or set the content of the STSs. In my experience, the STSs I have helped organize do not rely on pre-set Herbalife agendas or scripts, and to my knowledge we as distributors are not required to use any company agenda or script in the STS. When I have spoken at STS events, I have not followed any script from Herbalife. Speaker presentations at STSs are not submitted to Herbalife for review in advance. In my experience, decisions about the content of speaker and training sessions at the STSs are made by the local distributor planning committee.

5. STSs generally seek to educate attendees about the Herbalife business opportunity and provide training and advice about how to pursue that opportunity. But in my experience, each STS is different in terms of the individuals who may give testimonials, the specific speakers who provide presentations, and the specific training


1 given to attendees. When I speak at STSs, I do not give the same scripted speech each
2 time. My practice to change or adapt at least portions of my presentations based upon the
3 audience I am speaking to, and the subject areas where I have been asked to provide
4 training.

5 6. As an Herbalife distributor, I know that I am obligated to follow the code of
6 conduct and rules set forth in the Herbalife Sale & Marketing Plan. My understanding is
7 that these rules prohibit false or misleading statements about the Herbalife business
8 opportunity, and using certain types of business methods in pursuing the opportunity. The
9 rules also make clear to distributors that success within Herbalife is not guaranteed. In my
10 experience, Herbalife has always been serious about requiring that distributors comply
11 with these rules and this code of conduct, and Herbalife expects distributors to act ethically
12 and follow the rules in pursuing their Herbalife business opportunity.

13 I declare under penalty of perjury under the laws of the United States of America
14 that the foregoing is true and correct.

15 Executed on December 17, 2019 at Ormond, FL.

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Tommy Gioiosa